

Research note: Immigration and Asylum Services

Background

One of the five elements of our vision for legal services is a diverse workforce that understands its diverse clients. The Panel's work programme supports this objective through a programme of focused studies on specific groups of consumers who are in vulnerable circumstances when accessing legal services. Our first such study looked at the legal needs and experiences of deaf and hard of hearing people. The research was commissioned in partnership with Action on Hearing Loss and the Solicitors Regulation Authority and provided fresh insight into a vulnerable consumer group. Following the research the Law Society issued two new practice notes for solicitors, one on providing legal services for people with hearing loss and one on equality and diversity requirements, including making reasonable adjustments. In light of our findings the Law Society also intend to commission an e-learning package on equality and diversity including disabilities, while the Solicitors Regulation Authority are currently scoping a project on consumer outcomes, vulnerability and the role of information.

Our offer of help follows a thematic review by the Legal Services Board (LSB) on whether the qualifying regulators – the Solicitors Regulation Authority, Bar Standards Board and ILEX Professional Standards – were appropriately managing risk in the immigration advisory field. The review found significant problems with the regulatory architecture, an inadequate understanding of the market and difficulty in accessing redress. It concluded there was significant, avoidable detriment to consumers. One specific criticism, also highlighted by the Panel in our submission to the review, was a lack of evidence on the consumer experience. The LSB has asked the regulators to gather evidence of problems, issues and consumer experiences.

Immigration advice and services are accessed by a wide range of consumers, many of whom may be regarded as particularly vulnerable. This group includes people seeking asylum who are fleeing torture, imprisonment or death in their country of origin. This group may in turn include other very vulnerable individuals such as: unaccompanied minors; those who speak/understand little English and therefore have great difficulty in understanding documents and procedures and making

themselves understood; those who have serious mental health problems; those who are homeless or destitute; and those who are particularly vulnerable because of their gender or sexual orientation. Some of these vulnerabilities may be created or reinforced by the particularly complex and difficult system asylum seekers face in the UK.

Aims and scope of this paper

This scoping note is intended to summarise evidence available on existing consumer detriment in the immigration area in order to assess what further research may be needed. It describes the processes followed by asylum seekers entering the UK and summarises publically available research and other evidence.

We have decided to prioritise asylum advice and services, as we consider this is where the highest vulnerability arises due to the circumstances of those individuals in need of assistance, as described above. By contrast, research suggests that migrants targeted under the points-based visa system have higher levels of education, experience of living in the host country, younger age and greater language fluency. Such people may be less vulnerable when seeking legal advice. Moreover, where companies sponsor workers they may seek their own legal advice on behalf of the employee. There are also obvious practical difficulties in researching the experiences of those refused clearance to enter the UK for work, to study, or to join family members settled here. People who try to enter the UK without a visa are likely to be stopped at the port of entry and sent back. This also means that unlike in asylum cases, the situation of people entering the UK and then having to navigate the system to resolve their case from inside the country is less likely to arise.

Legal advisors in the immigration area are regulated by either one of the approved regulators or the Office of the Immigration Services Commissioner (OISC). They work within a system operated by another group of organisations, such as the Home Office and the Ministry of Justice. This paper discusses areas where the two overlap, for example the implications of legal aid funding for the quality of advice. We have committed to focus one of our work-strands on the experience of vulnerable consumers, although of course, the Panel and the qualifying regulators must stay within their spheres of responsibility. However, we each have legitimate scope to comment on issues which may impact on achievement of the regulatory objectives in the Legal Services Act 2007. Moreover, it is important to remember that people seeking asylum do not make such subtle distinctions and it is right to view their experience in overall terms.

Summary of key conclusions

We have drawn some initial conclusions from our analysis of the available evidence:

- There are relatively few asylum applicants each year (around 20,000 – falling to around 10,000 at appeal), but they can be characterised as extremely vulnerable;
- The processes for claiming asylum, seeking support and appealing decisions are very complex – the system has been described as a labyrinth;
- There are difficulties in accessing legal advice – it is difficult to find advisors and they may not have capacity to take on more cases, or they may not be able to provide the type of specialist advice required;
- There are further concerns that advice providers have recently been exiting the market;
- Due to the way legal aid is funded there are arguably perverse incentives for advisors to complete work quickly, take on only the most straightforward cases, and drop cases at the appeal stage if they are too complex – this risks inhibiting access to justice for those who need it most;
- There are some concerns about the quality of advice, yet good quality legal advice has been shown to make a difference to case outcomes;
- The asylum seeking group, while already vulnerable, contains a number of sub-groups who may be considered particularly at risk. This includes unaccompanied minors who may not understand the system, and women, who have been shown to be disproportionately affected by initial refusals which are later overturned upon appeal. The impact of high quality legal advice to these groups is particularly significant.

Currently, there does not appear to be an holistic piece of research focusing on the asylum-seeker experience of legal services – rather the existing research tends to focus on very specific groups and problems. Our desk research suggests future research could focus on two broad areas:

- **Access to legal advice and support** – available evidence shows that providers of asylum advice have been declining and asylum seekers searching for representatives may have difficulty finding an advisor.¹ Recently high profile large advice providers have exited the market. In addition to this, although there may be a large enough ‘bank’ of advisors to meet demand across the UK, it seems that in practice advisors may be concentrated in certain areas. Types of advice may also be lacking – so for example it may be possible to find an advisor to give initial advice but not to deal with an appeal or a fresh claim. Accessing advice at an early stage can assist with high

¹ See in particular Asylum Aid, *Access to asylum advice in London*, 2006. Also Information Centre about Asylum and Refugees, *Review of quality issues in legal advice; measuring and costing quality in asylum work*, 2010 and Asylum Aid, *Unsustainable*, 2011.

quality initial decisions being made on cases. This is underlined by evidence from the joint Home Office-Legal Services Commission initiative the 'Solihull Pilot'. Research consistently states that access to good quality legal advice is also essential at the appeal stage (where it can have a demonstrable effect on the success of appeals), as well as when seeking asylum support or appealing decisions relating to support.

- **Quality of legal advice and support** – The quality of legal advice received is key. Advisors may need to have very specific skills, for example when working with unaccompanied asylum seeking children. This means not only having a thorough knowledge of the applicable law but also being able to give advice and take instructions in a particularly sensitive manner in order to achieve the best possible outcome for their client. However, poor quality advice has been identified by a number of studies. One study for example, which focused on London, identified problems such as advisors submitting poorly prepared and contradictory statements, missing key dates or getting them wrong, failing to address key issues, missing deadlines, not going into sufficient detail and submitting fabricated information. In addition to this there were reports that asylum seekers had difficulty in being updated on the progress of their case by advisors.² Mistakes such as these can make the difference between a claim being accepted or rejected. Various reasons for poor quality advice have been proposed, including the incentives produced by the current Legal Aid system.

² Greater London Authority, *Into the Labyrinth, legal advice for asylum seekers in London*, February 2005, pp. 53-55. See also the Immigration Law Practitioners' Association *Response to the LSB consultation on the regulation of immigration advice and service*, May 2012, p. 1.

Desk research on asylum processes and groups

Key statistics³

- The SRA currently regulates around 1,300 firms which carry out some form of immigration work, while the Office of the Immigration Services Commissioner (OISC) regulates 1,930 organisations (3,375 advisors) providing immigration advice. ILEX Professional Standards/CILEx currently have 27 immigration advisors on their immigration register. The Bar Biennial survey identified 4% of barristers who indicated that they provide immigration advice and services, with only 2% stating that it is their main area of practice;
- 19,804 applications for asylum in total in 2011;
- 25% of decisions were grants of asylum, 8% were grants of temporary protection (such as humanitarian protection or discretionary leave) and 68% were refusals;
- 88% of asylum applications made in-country rather than at port;
- In 2011, a total of 9,980 main applicants requested an asylum appeal;
- 26% of these appeals were allowed;
- The proportion of allowed appeals rises for more vulnerable sub-groups within this – for example a study by Asylum Aid found the percentage of women's initial refusals overturned at appeal was as high as 50%.

Asylum immigration process

Requests for international protection are made under the Geneva Convention, and considered in line with the UK Immigration Rules, the asylum policy instructions, the EU Directives on refugee procedures and standards, and the United Nations High Commissioner for Refugees (UNHCR) Handbook. Signatories to the Geneva Convention are not obliged to grant asylum to genuine refugees, but they are required not to remove (or require to leave) those who are genuine refugees and who would be placed in danger if returned to their country of origin.

Asylum applicants may be considered to be extremely vulnerable when in the process of seeking asylum due to circumstances such as:

- Treatment/experiences in country of origin (including those affecting physical or mental health);
- Lack of English skills;
- Poverty;
- Inexperience of the system;
- Complexity of the system and time limits for submitting information.

³ See Solicitors Regulation Authority, Bar Standards Board and ILEX Professional Standards/CILEx responses to the LSB *consultation on the regulation of immigration advice and services*, May 2012, and OISC Annual Report 2011/12 for first point. Other figures are from the Home Office asylum and immigration statistics.

Many of these indicators of risk of vulnerability appear in British Standards Institute Standard 18477:2010 on Inclusive Service Provision, a standard which the Consumer Panel has adopted and which sets out requirements for identifying and responding to consumer vulnerability.

Claiming asylum

To apply for asylum applicants must either claim immediately by telling the immigration officer at the port of entry, or once they have entered the UK they should go to the Asylum Screening Unit (ASU) in Croydon and claim asylum there. In practice most people go to ASU. On a practical level it is possible to book appointments by telephone – applicants need to be able to talk for up to 30 minutes, and a member of United Kingdom Border Agency (UKBA) staff may call them back (meaning they also need a phone). Otherwise applicants have to queue and there is no guarantee they will be seen the same day. If there are dependents on the asylum claim (typically wife and/or children) the dependents have to be taken to ASU along with the main applicant. There were reports from the Immigration Law Practitioners Association and the Law Society in autumn 2011 that people going to ASU in person were being turned away and told to phone, while it was not possible to get through to UKBA representatives by phone (including when legal representatives/secretaries repeatedly called).⁴

Detained fast track

Applicants may also be detained at ASU. This is usually because their claim is thought to be straightforward and capable of being decided quickly, although in practice details of the actual asylum claim are not taken at this stage, making it difficult for screening interviewers to make an informed decision on whether the applicant is really suitable for this process. If they are detained applicants will be taken to a detention centre and fast tracked – their claim will be decided within 14 days. Typically the asylum interview is held the day after detention, with service of the decision on the following day and appeals decided within one week of any refusal. If the claim is refused the applicant can then be removed from the UK directly from the detention centre.

These cases should always have access to legal advice – the Home Office caseworker will call the duty solicitor if the applicant requests this. The situation presents particular challenges for the legal advisor: in addition to dealing with the asylum claim they will also have to give advice regarding bail and seek to have the applicant's case taken out of the fast track where necessary.⁵ The very short timescale means the advisor needs to get access to the applicant very quickly to advise and represent their client to the best of their ability. The fast track procedure can also cause complications for applicants as supporting documentation (where in

⁴ See <http://www.guardian.co.uk/uk/2011/sep/29/asylum-seekers-prevented-lodging-cases>.

⁵ See ILPA, *Detained fast track, a best practice guide*, 2008.

existence) must be provided to support a claim, but the short timescales mean it is unlikely that documents can be translated in time to be taken into consideration. The same holds true for medical assessments. 2,571 applicants were accepted into the detained fast track process in 2010 (the last full year for which Home Office figures are currently available).⁶

Non-detained process

Where the main process is followed at ASU applicants will have a screening interview where their personal details and information about their journey to the UK are taken, they are assigned a case ID number and an official checks whether they have claimed asylum in the UK or the EU before (people should claim asylum in the first safe country they reach. If they are found to have passed through other countries on the way to the UK where they could have claimed they might be sent back to these third countries).

The applicant will be asked to report again a few days later and will meet the case owner who will deal with their case. They will also be asked to submit a Statement of Evidence Form (SEF) detailing their claim – this can include medical evidence for example. It should be submitted within 10 days of the screening interview which means it can be difficult to gather and submit full expert evidence in practice.

Then the applicant will attend a substantive interview where they will be asked to describe exactly what has happened to them, how they came to the UK and what they fear in their country of origin. The case owner will prepare questions for the interview using the SEF. A legal representative can attend this interview (although they do not have to and in practice are relatively unlikely to), as can an interpreter. It is important that the applicant tells their full story at interview – although it should be recognised that in some cases this can be very difficult as the interview can be a stressful situation, the applicant may have dependents (including children) with them, the facts may have to be told through an interpreter, and the applicant may be traumatised making it difficult to explain all the facts and also making it easy to miss things out or to confuse dates. Any missing information or discrepancies can make their case seem less credible. The case owner will then make a decision, and as the Home Office has worked on streamlining the process the aim is to make decisions using the ‘two plus four’ target system (initial decision within 2 months, appeals considered within a further 4 months, so the process is completed within 6 months altogether).

At the first meeting with the case owner applicants are also given a form with the address they must live at and any reporting requirements (this could mean going daily, weekly or monthly to reporting centres where applicants have to go to sign in).

⁶ See <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/immigration-tabs-q4-2011/asylum3-q4-2011-tabs>, Asylum data tables, Immigration statistics, October-December 2011, Volume 3.

Applicants may be detained at any time when reporting. If this occurs removal directions will likely be set and the applicant will be removed from the UK.

In 2006 HM Inspectorate of Prisons inspected holding facilities at Lunar House and Electric House in Croydon. They made a number of practical recommendations and highlighted various points about the detention facilities and procedure. These included issues around comfort, for example that hot meals should be provided to detainees (they were offered sandwiches); men, women and children should not be held in the same room; there should be baby changing facilities; there was no opportunity for people to collect their belongings or secure any property if they were detained and removed; and those on medication might not have it with them and be able to take it. The report also highlighted that pay phones were available but detainees needed the right money to be able to make calls to inform people where they were, or to representatives. There were no notices in the rooms explaining how to access legal advice. For detainees in need of a solicitor, holding room staff had a folder of information issued in various languages by OISC, which provided useful information. However, detainees had to ask for this; there were no notices in the holding room suggesting how to find suitable legal advice or advertising the OISC folder. A free telephone call to solicitors was not routinely offered.

The holding facility at Becket House in Croydon was inspected more recently, in 2009. This facility is also used to detain asylum seekers prior to transferring them to a detention centre. The report made very similar recommendations to those above, and it appears that although some of the previous suggestions have been acted upon, many have not been put into practice. It was noted for example that a man detained during the inspection was interviewed for less than two minutes to explain the reasons for detention – and he had not understood that he could appeal or access legal advice. Although staff were found to be helpful they had little understanding of the importance of legal information. The report recommended that the possibility of applying for bail and accessing legal advice should be fully explained in a language understood by the detainee. Detainees should also be routinely offered a free phonecall and be able to fax documents to legal representatives – this had been partially but not fully achieved since the previous report. Displaying information, including sources of specialist legal advice, clearly in the holding room had still not been achieved. The report also recommended that the number for incoming phonecalls should be clearly displayed so that representatives are able to call their clients back.⁷

⁷ See HM Chief Inspector of Prisons, *Report on an unannounced follow-up inspection of the non-residential short-term holding facility at Becket House*, December 2009.

Availability and access to legal advice/representation

The Home Office website does not mention legal advice as being necessary to make a claim for asylum, although there is advice on how to find an advisor if desired. In theory applicants should be able to tell their version of events to a case owner and the claim will then be judged on its merits. However, the Home Office is also required by a European Directive to provide information about the availability of legal advice and support entitlements. This is usually done through a 'one stop' notice which is given to most applicants at the start of the process.

There is currently no coordinated system for finding a legal advisor. Applicants could search through the OISC website, through 'Find a Solicitor' on the Law Society website or through the ILPA directory for example (note that none of these sites appeared on the first two pages of Google when using the search terms 'seeking asylum need lawyer' and 'need asylum advice'). The OISC website allows search by area/location, level of advisor and organisation/advisor. For this last the searcher needs to know the name of the organisation or advisor. Results are simply listed in alphabetical order, with the name, address, and in some cases, the website of providers. There is no information on gender of advisors, languages offered, areas of specialisation within immigration, price etc. Using the OISC website to find an advisor in the postcode NW3 for example it quickly became apparent that of the first 10 advisors/organisations listed a number were no longer in existence, were simply selling domain names, or offered visa/sponsorship advice for economic migrants but apparently not asylum advice.⁸

Therefore it appears that existing channels for finding an advisor are not effective. Although over 4,500⁹ people are regulated (and by implication assessed as competent) to give immigration advice, since it is so difficult to find an advisor it may be that a different system for matching claimants to representatives who specialise in the correct area and have capacity is needed. A study carried out by Asylum Aid in 2006 proposed that a co-ordinated system should be set up to refer asylum seekers to competent legal advisors, both at the start of the asylum process and for a second opinion when an asylum seeker has been dropped by their previous representative.¹⁰ Potentially, for example, asylum seekers could initially be matched with a representative upon claiming asylum at Lunar House in Croydon – this could 'catch' close to 90% (most asylum seekers claim in-country rather than at port) of claimants at the earliest possible stage in the process.

⁸ Searches carried out on 11 July 2012.

⁹ The Solicitors Regulation Authority response to the *LSB consultation on the regulation of immigration advice and services*, May 2012, stated that almost 1,300 SRA regulated firms carry out some form of immigration related work, while ILEX Professional Standards/CILEx currently regulate 27 immigration advisors. The OISC Annual Report 2011/12 gave figures of 3,375 regulated immigration advisors at March 2012.

¹⁰ Asylum Aid, *Access to Asylum Advice in London, a scoping study*, 2006.

There is some evidence that migrants are increasingly using the internet to find advice.¹¹ They may also ask friends/relatives, go through charities or refugee organisations, ask interpreters or go through agents who have brought them into the country. It is unlikely they will have an understanding of regulation, who is and is not regulated and what this means, or how to find a regulated advisor. Indeed the London Mayor's report found that asylum seekers typically do not know how the asylum system works before they arrive in the UK and are unlikely to understand the role of advisors/advice.¹²

The available evidence shows that providers of asylum advice have been declining and asylum seekers searching for representatives may not be able to find an advisor.¹³ Recently high profile large advice providers such as the Immigration Advisory Service and Refugee and Migrant Justice have exited the market. In addition to this, although there may be a large enough 'bank' of advisors to meet demand across the UK, it seems that in practice advisors may be concentrated in certain areas. Types of advice may also be lacking – so for example it may be possible to find an advisor to give initial advice but not to deal with an appeal or a fresh claim.

However, accessing advice at an early stage can assist with high quality initial decisions being made on cases. The 'Solihull Pilot' carried out by the Home Office and the Legal Services Commission (LSC) in 2007 aimed to improve the quality of initial asylum decisions by allowing claimants access to high quality information and advice from legal advisors from the earliest stage of the process. This allowed a trusting relationship to develop between the advisor and the claimant, aiding full disclosure of the facts at an early stage. It also meant the client had confidence that the best possible case had been put forward. At the same time, legal advisors and Home Office caseworkers were encouraged to work together, which ensured that issues were raised and discussed with the caseworker before the initial decision letter was sent out. The pilot found significant improvement in case conclusion targets (meaning greater numbers of more sustainable initial decisions were made), as well as potential savings due to lower allowed appeal rates.¹⁴

In addition to this research consistently states that access to good quality legal advice is also essential at the appeal stage (where it can have a demonstrable effect

¹¹ Migrants' Rights Network, *Advice and Support Provision for Migrants in London: a view from the field*, October 2011.

¹² Robinson V and Seagrott J, *Understanding the decision-making of asylum seekers*, Findings 172 (2002), Home Office Research, Development and Statistics Directorate; Gilbert A and Khoser K, *Information dissemination to potential asylum seekers in countries of origin and/or transit*, Findings 220 (2002), Home Office Research, Development and Statistics Directorate quoted in Greater London Authority, *Into the Labyrinth, legal advice for asylum seekers in London*, February 2005, p. 49.

¹³ See in particular Asylum Aid, *Access to asylum advice in London*, 2006. Also Information Centre about Asylum and Refugees, *Review of quality issues in legal advice; measuring and costing quality in asylum work*, 2010 and Asylum Aid, *Unsustainable*, 2011.

¹⁴ See Aspden, J., *Evaluation of the Solihull Pilot*, 2008 and Information Centre about Asylum and Refugees, *Review of quality issues in legal advice; measuring and costing quality in asylum work*, 2010.

on the success of appeals),¹⁵ as well as when seeking asylum support or appealing decisions relating to support.¹⁶

Legal Aid funding for advice

Asylum seekers do have a right to access legal advice,¹⁷ and because the majority are not entitled to work they are likely to be eligible for Legal Aid which is administered by the LSC. However, there are a number of restrictions on this. There is a merits test – there has to be significant benefit to the client in order to qualify. This is decided by the advisor. Legal aid solicitors' remuneration is based on a fee per case, regardless of how complicated the case is and how long the advisor needs to spend on it. There is a risk advisors may try to take on only the most straightforward cases due to these limitations and criticisms of the system have been raised, including that the system incentivises advisors to choose only the most straightforward and least time consuming cases, and to spend less time on each case.¹⁸

As stated above, there have been complaints that immigration advisors have spent full days trying to get through to ASU telephone lines in Croydon simply in order to book an initial screening interview for their clients. This risks using up all the time an advisor might have to spend on a claimant. Interviews can take several hours or more, and the time threshold means legal advisors are unlikely to be able to attend interviews with their clients either. However studies such as the Solihull Pilot evaluation consistently stress the need for enough time to be spent on cases, and for representatives to be present at interview and to meet with claimants at the earliest possible stage in the process, in order for the advice provided and the decisions reached to be of a high standard.¹⁹

It is possible that advisors may be able to recoup costs incurred on complex cases by offsetting them against quicker, more straightforward cases. However, this type of cross subsidisation is likely to be usable only by large firms providing bulk immigration advice. It may also be inefficient because it cannot be relied upon to ensure high quality advice is provided to all who seek representation, unless a mechanism can be put in place that could allow clients to identify and use those providers that provide better quality.

¹⁵ The Devon Law Centre Asylum Appellate Project, Second year report (2012) found that overall all appellants (represented and unrepresented) before the Asylum and Immigration Tribunal had a 23% success rate while those who had legal representation had a 51% success rate – in other words the likelihood of the appeal being granted was more than twice as high when the claimant had a legal advisor.

¹⁶ See for example Asylum Support Appeal Project, *No Credibility: UKBA Decision Making and Section 4 Support*, April 2011 and Citizens Advice Bureau, *Supporting Justice* briefing, June 2009. These reports also show a higher number of successful appeals when the claimant is represented.

¹⁷ See http://www.asylumaid.org.uk/pages/how_to_find_other_legal_representation.html

¹⁸ ILPA, *Legal Aid: current practices and developments*, September 2011.

¹⁹ See also ILPA, *Legal Aid: current practices and developments*, September 2011.

Quality of legal advice

Advisors may need to have very specific skills, for example when working with particularly sensitive groups such as unaccompanied asylum seeking children. This means not only having a thorough knowledge of the applicable laws but also being able to give advice and take instructions in a sensitive manner in order to achieve the best possible outcome for their client.²⁰ However, poor quality advice has been identified by a number of studies. One study for example, which focused on London, identified problems such as:

- Advisors submitting poorly prepared and contradictory statements;
- Missing key dates or getting them wrong;
- Failing to address key issues;
- Missing deadlines;
- Not going into sufficient detail;
- Submitting fabricated information.²¹

Issues such as these can make the difference between a claim being accepted or rejected. In addition to this there were reports in the same study that asylum seekers had difficulty in being updated on the progress of their case by advisors.

Meanwhile in June 2012 the Criminal Cases Review Commission identified 11 cases where asylum seekers and refugees were not adequately advised by lawyers of defences available to them, and commented that there could be a substantial number of similar cases.²²

Various reasons for poor quality advice have been proposed, including the incentives produced by the current Legal Aid system which are discussed above. Good quality advice on the other hand, can aid good quality initial decisions, as is evident from the Solihull Pilot. This may be due to the relationship between the advisor and the claimant which helped with full early disclosure of the facts, the way that advisors and Home Office caseworkers were encouraged to work together to make sure any issues were worked through before the initial decision was made, attendance of the advisor at the asylum interview, or because the legal advisor was given access to the claimant at the earliest possible stage – indeed it is likely to be a combination of these factors. Legal firms who took part in the pilot were selected on the basis of being able to offer ‘*the best service to clients through sufficient numbers of skilled and experienced staff, effective supervision arrangements, applicable experience and who had a good track record of audit with the Commission*’,²³ meaning the

²⁰ Coram Children’s Legal Centre, *Navigating the System: Advice provision for young refugees and migrants*, May 2012, pp. 28-31.

²¹ Greater London Authority, *Into the Labyrinth, legal advice for asylum seekers in London*, February 2005, pp. 53-55. See also the Immigration Law Practitioners’ Association *Response to the LSB consultation on the regulation of immigration advice and services*, May 2012, p. 1.

²² See <http://www.lawgazette.co.uk/news/hundreds-miscarriage-justice-claims-over-legal-advice-failings>.

²³ Aspden, J., *Evaluation of the Solihull Pilot*, 2008, p. 25.

selection process is likely to have specifically targeted high quality advisors able to undertake even the more complex aspects of a case.

Asylum support

Asylum seekers are not allowed to work unless they have been waiting for more than one year for a decision through no fault of their own. If they need accommodation they are typically given a place in temporary housing for a few weeks before being dispersed to accommodation outside London and the south east. Accommodation is furnished and has utilities provided. Cash support is provided to cover other expenses such as food and clothes. Weekly allowances are:

- Qualifying couple (married or in a civil partnership): £72.52
- Lone parent aged 18 or over: £43.94
- Single person aged 18 or over, excluding lone parent: £36.62
- Person aged at least 16, but under 18: £39.80
- Person aged under 16: £52.96

Cash support might also need to be used to pay for:

- Internet access to research issues/find advice;
- Legal advice (where not provided through legal aid);
- Translation and interpretation (the Home Office provides interpreters for interviews for example, but all letters and forms are in English which may mean applicants need to get them translated. Where original documents are submitted they usually need to be accompanied by an official translation signed by the translator).

If appeal rights are exhausted the applicant is supposed to return to their country of origin. In practice this may not be possible, for example because they are not able to obtain travel documents (because they are not accepted by the embassy as a national of that country), there is no safe route of return, or the Home Office accepts conditions in their country make it unsafe for them to return but will not grant leave to remain in the UK. In these cases people may be able to access National Asylum Support Services (NASS) Section 4 hard case support – this is accommodation plus around £35 per week given in vouchers – and is conditional on their co-operating with attempts to remove them. These failed applicants usually have to report regularly to reporting centres – they are not normally entitled to receive travel expenses for this, and if the reporting centre is within 3 miles of where they live they are expected to walk there.

There is evidence from various refugee organisations that asylum seekers are not always able to access support or may be cut off when they are actually entitled to support. The rules in this area are complex. A study funded by the Mayor of London in 2005 found that while some legal advisors provided good advice in relation to the

actual claim, many advisors do not have expertise in asylum support and cannot resolve problems or give reliable advice in relation to support.²⁴

Research carried out by Citizens Advice in 2009 found it was very difficult for applicants to get representation against a decision to terminate support, but that if they did get legal representation before the Tribunal the chances of success increased from 39% to between 61% and 71% - a 'representation premium' of 22%-32%.²⁵ Those who are not able to retain support may not leave the country but may end up destitute.

Outcomes

An applicant may be granted asylum, or if not they may be granted humanitarian protection or discretionary leave to remain. Asylum or humanitarian protection is usually granted for 5 years – after this the applicant will have to show that it is still unsafe for them to return to their country of origin if this is the case. Applicants who are granted asylum may apply for family reunion for their dependent family members, who may then be able to join them in the UK.

Discretionary leave can be granted for up to 3 years. Children accepted to be under the age of 18 are usually granted discretionary leave until they are 17½ years old, even if they have been refused asylum. Otherwise the claim may be refused.

Home Office figures show there were 19,804 applications for asylum in total in 2011 and of these 17,496 initial decisions were made. These figures account for 25,455 individuals when dependants are included. 25% of decisions were grants of asylum, 8% were grants of temporary protection (such as humanitarian protection or discretionary leave) and 68% were refusals. 88% of these applications were made in-country at ASU rather than at port.²⁶

Particularly vulnerable groups

Looking in more depth using appeal statistics, it is possible to see that poor quality initial decisions may disproportionately affect the most vulnerable groups, for example women, unaccompanied children or those who have experienced torture. A report by Asylum Aid in 2011 found that 50% of decisions in their sample (all women) were overturned on appeal. This sample is interesting – it was small and as the participants were identified by legal representatives the findings are likely to be skewed towards represented cases, so should be treated with care. Even so the study identified a shortage of legal representatives. It also found that women who were represented had a chance to build a trusting relationship with the legal advisor

²⁴ See Greater London Authority, *Into the Labyrinth, legal advice for asylum seekers in London*, February 2005.

²⁵ Citizens Advice Bureau, *Supporting Justice* briefing, June 2009, pp. 1-3.

²⁶ <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/immigration-brief-q4-2011/asylum>.

which assisted with full disclosure of the facts.²⁷ The study found that in many cases the women were originally refused asylum due to wrong application of the Convention and asylum rules by caseworkers.

The Geneva Convention was originally drafted to deal with people displaced by World War II, which means it does not lend itself easily to dealing with new causes of migration such as the oppression of women and children. Persecution due to gender is not explicitly recognised by the Convention as grounds for recognising a claim for asylum, although gender related persecution may engage the Convention on the ground of membership of a Particular Social Group (PSG). Refugee women are more likely to suffer forms of harm such as trafficking, forced marriage, female genital mutilation, sexual violence, honour killings or forced sterilisation. There is evidence that the UKBA does not always fully engage with and understand women's experiences when assessing asylum claims, and consequently does not always apply the rules correctly.²⁸ Case workers may not be aware of the nature of persecution which women flee and therefore find their claims to be not credible. Other factors which cause women not to fully disclose facts were mentioned in various reports.²⁹ These included:

- Having male interviewers or interpreters, even in some cases where a female interpreter as well as interviewer had been specifically requested;
- Having to shout answers in crowded waiting rooms during an initial screening interview;
- Not having time/opportunities to develop a trusting relationship with the caseworker, which would facilitate disclosing difficult personal information;
- Caseworkers asking inappropriate or irrelevant questions during interviews;
- Having children present in interview.

Additionally, those who are traumatised by their experiences may be unable to clearly pinpoint particular episodes clearly in time – they may appear vague or contradictory – something which can then be interpreted as detracting from the applicant's credibility (this finding also applies to applicants who have experienced torture). These factors may account for the high numbers of successful appeals to an independent immigration judge. Since the Asylum Aid report cited above the UKBA has confirmed high numbers of refusals for asylum seeking women are overturned on appeal and plans to analyse the data further.

²⁷ Asylum Aid, *Unsustainable*, 2011. Since this report the UKBA has confirmed high numbers of refusals for asylum seeking women are overturned and plans to analyse the data further.

²⁸ United Nations High Commissioner for Refugees, *Quality Integration project*, report August 2010, pp. 8-12. See also Asylum Aid, *Relocation Relocation: the impact of internal relocation on women asylum seekers*, November 2008, p. 26.

²⁹ See for example UNHCR *Quality Initiative project* report, March 2006, pp. 13-18 and Asylum Aid, *A gender analysis of UK asylum law, policy and practice*, January 2012, pp. 34-64 and Asylum Aid, *Unsustainable*, 2011.

Appeals against a refusal

If the claim is refused the applicant is likely to have an in-country right of appeal. Applicants from certain countries, whose claim for asylum is found to be clearly unfounded, may be removed and have to appeal from outside the UK (non-suspensive appeal).

Time limits for submitting an appeal to the Immigration and Asylum Tribunal are within 5 days if detained or within 10 days if not (this is the time taken for the papers to reach the Tribunal, including time for posting etc). They can also be submitted online, although this may not be practical. In reality it can be difficult if not impossible for an applicant to provide all the supporting evidence required within these timescales – for example it is highly unlikely an applicant could see a specialist doctor and submit medical evidence of torture if their claim on these grounds has been dismissed due to lack of evidence or credibility.

Applicants have to pay for appeals. It is more expensive to have the appeal heard orally (£140 per person as opposed to £80 to have it determined on paper). There are exemptions to fees, including for those in receipt of asylum funding (not including those in receipt of NASS Section 4 hard case support), those on the detained fast track, and those in receipt of legal aid.

The UKBA will usually have a legal representative attending the appeal on their behalf, even if the applicant does not have legal representation.

Unsuccessful appeals at the First-tier may be appealed to the Upper Tribunal in certain circumstances. Following this a further appeal might be possible to the Court of Appeal. It may also be possible to have a decision Judicially Reviewed – however, this will not reconsider the facts but will only consider if the Home Office has followed the correct processes when determining a claim. A successful Judicial Review does not mean the applicant will then be granted leave, it means the asylum claim will be considered again. It is unlikely that an applicant could follow these types of option without legal representation.

In 2011 26% of asylum appeals were allowed. Some commentators have interpreted this relatively high number of overturned initial decisions to mean that the quality of UKBA initial decision making is poor, something which puts applicants (particularly those who do not have the benefit of high quality legal representation) at risk.³⁰ The UNHCR ran the *Quality Initiative Project* from 2004 to 2009 with the aim of improving the quality of UKBA initial decision making. The findings highlighted a number of causes for concern, focusing in particular on the application of the refugee definition, the approach to establishing the facts ('credibility') and the conduct of interviews.³¹ Currently the UNHCR is still working with the UKBA in order to implement the recommendations.

³⁰ See for example Asylum Aid, *Unsustainable*, 2011.

³¹ For more information see <http://www.unhcr.org/uk/what-we-do-in-the-uk/quality-initiative-and-integration.html>.

Representation at appeal

Applicants are only entitled to legal aid to fund representation at appeal if it is judged that their case has a 50% or more chance of success. The legal advisor has to decide whether the case meets the merits test or not. The procedure is so complex the London Mayor's report from 2005 suggests that some legal advisors do not even attempt to explain the legal aid system to clients.³²

Research also suggests that cases may be abandoned because advisors don't apply to the LSC for funding or funding is refused. Previous anecdotal evidence suggested cases may also be dropped based on, for example, who the adjudicator is (some adjudicators were apparently thought to be more likely to allow appeals than others).³³ The LSC may review both legal advisors' refusal to apply for funding and the LSC's refusal of funding – however, often it does not seem to be made clear to applicants that there is a possibility to appeal the refusal of funding.³⁴ Clients who have been dropped by their advisor at the appeal stage are unlikely to be able to find another advisor to take on their case, and indeed may not be able to find someone else within the time limits.

In 2011, a total of 9,980 main applicants requested an asylum appeal. The proportion of appeals dismissed in 2011 was 67%; 26% of appeals were allowed and the remainder were withdrawn.³⁵

Access to high quality legal advice is as crucial at the appeal stage as it is during an initial claim – it has a significant impact on outcomes. The Devon Law Centre Asylum Appellate Project, Second year report (2012) found that overall all appellants (represented and unrepresented) before the Asylum and Immigration Tribunal had a 23% success rate while those who had legal representation had a 51% success rate – in other words the likelihood of the appeal being granted was more than twice as high when the claimant had a legal advisor.

³² Greater London Authority, *Into the Labyrinth, legal advice for asylum seekers in London*, February 2005, p. 71.

³³ *Ibid.*, p. 72.

³⁴ See for example Asylum Aid, *A gender analysis of UK asylum law, policy and practice*, January 2012, p. 18 and *Into the Labyrinth, legal advice for asylum seekers in London*, February 2005, p. 73.

³⁵ <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/immigration-brief-q4-2011/asylum>.

Conclusions

The Consumer Panel has carried out this literature review in order to take stock of the current situation and assess what (if any) further research may be needed. The available evidence suggests the process is complex, lengthy and difficult for applicants, who face a serious risk of detriment. There appear to be particular problems in accessing advice and support, as well as concerns about the quality of advice provided.

The asylum process is difficult because:

1. The system is complex – it is confusing to navigate and similar cases can end up with different outcomes. People seeking asylum do not always have a fluent level of English and this can make it more difficult for them to understand the processes (for example all decision letters are issued in English only);
2. The cases are complex – the issues which have to be dealt with are often very difficult. UKBA caseworkers may have problems applying the immigration rules or understanding the issues. Asylum seekers may find it very difficult to disclose all the issues relevant for full consideration of their case;
3. The groups which may be seeking asylum can be characterised as vulnerable – they may include women, unaccompanied asylum seeking children or people who have been subjected to experiences which have subsequently affected their physical or mental health. The decision-making process followed may have a disproportionately negative impact on these groups.

These factors combine to imply a risk of serious consumer detriment. Good legal advice is vital for people in these situations as they are unlikely to be empowered enough to be able to deal with the system effectively on their own. This is also underlined by the quality of initial decision making – in 2011 26% of cases overall which were initially refused were then allowed on appeal. There is evidence to suggest that legal representation at appeal increases the chances of a positive outcome.

Some research has been carried out in this area already, in particular by not for profit organisations, many of whom may provide advice or services to refugees themselves. However, following the LSB's review, as well as our own scoping, we conclude that further research and data collection carried out by the regulators of immigration advice is needed. This could focus on gathering relevant and up-to-date information on access to and quality of advice in the experience of asylum applicants (demand side). On the supply side, regulators may wish to look at the experience of those providing asylum advice to discover the reason why gaps appear to remain in the provision of advice, and to find out more about the experience of those providing frontline advice. Ultimately this should provide an holistic look at the experience of

asylum seekers who wish to access/do access legal representation and identify how any problems or gaps identified in this area might best be tackled.

There are two particular problems in relation to legal advice that would benefit from a stronger evidence base:

1. **Barriers to accessing legal advice and support** – there are reports that asylum seekers have difficulty in finding an advisor and that the number of asylum advisors is declining. There is no single joined-up point where asylum seekers could access legal advice and be matched to an advisor with capacity. In addition, while it may be possible to find advisors in certain parts of the country or for certain types of advice (for example on initial applications), other areas of the UK appear to be less well served, as are other areas of advice (for example appeals).
2. **Concerns about quality where advice is accessed** – concerns have also been raised in the past that the quality of asylum advice is not always of a high standard. In some cases it may be that advisors simply do not have enough time to go through cases thoroughly. In other instances it appears that work carried out is sloppy and puts claimants at risk. Most notably the Criminal Cases Review Commission recently identified 11 cases where asylum seekers and refugees were not adequately advised.

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